

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LORETTA J. MORRIS	:	CIVIL ACTION
	:	
v.	:	
	:	
WASEEM YOUNIS	:	No. 06-CV-2576

**MEMORANDUM AND ORDER**

Ditter, J.

May 3, 2007

In this case, the plaintiff seeks a declaration that her ownership interest in three limited liability partnerships is proportionate to her share of capital contributions. In addition, she seeks their dissolution, an accounting, a return of her investments, and damages for defendant's mismanagement and misrepresentations concerning their formation. For the reasons that follow, I am refusing defendant's motion for partial judgment on the pleadings.

Well-known standards govern the resolution of this matter: (1) judgment on the pleadings for the defendant should be granted only where there are no issues of fact and the right to judgment is clear; and (2) for the purposes of his motion for judgment on the pleadings, a defendant admits the truth of all the facts well-pleaded by the plaintiff.

I. The Pleadings

In her amended complaint, Loretta J. Morris asserts that she and the defendant, Waseem Younis, agreed to enter into a series of real estate ventures in Philadelphia as partners. In return for a majority ownership position, she would contribute the majority of the capital and Younis would oversee the development and management of the properties. Their intent was to purchase properties for redevelopment purposes and either lease them or sell them at a profit. Younis

represented to Morris that he had experience in similar projects.

In furtherance of their plans, Morris and Younis decided to purchase three properties and under applicable Pennsylvania law formed a separate limited liability company for each. Morris alleges that when each of the companies was formed, she and Younis understood that as she was contributing a majority of the capital she would retain a majority interest in each of them.

Plaintiff goes on in her amended complaint to assert the details of the three purchases and the corresponding formation of the limited liability companies.

In July, 2004, they bought a property on Girard Avenue and formed the “Girard LLC” by filing a certificate of organization with the Pennsylvania Department of State Corporation Bureau. Morris contributed \$220,620.51 to the venture while Younis paid \$23,800. Thereafter, Younis represented to Morris that further funds were needed for the property’s redevelopment and at various dates and by personal checks to Younis, she made additional cash contributions which totaled \$117,644.53. As a result, she asserts that her payments for the Girard LLC were \$338,265.04, or 93.4% of the total investment in that venture.

Although paid a management fee of \$16,758, Younis has failed to complete the redevelopment of the project when he represented he would do so, has failed to provide to Morris an accounting for the monies involved, and has not provided reports concerning the status of the project.

As their second project, on August 24, 2004, the parties purchased a property on 19<sup>th</sup> Street and formed the “830 N. 19 Street LLC,” again a limited liability company organized under the laws of Pennsylvania. To date, Morris has contributed \$106,578.12, or 87% of the capital while Younis has paid \$25,900 or 13%.

Younis represented to Morris that he would cause the redevelopment of the 19<sup>th</sup> Street

property to be completed no later than October, 2005, but has failed to do so. In addition, despite Morris' numerous requests, Younis has failed to provide written status reports concerning a project description, budget, and completion dates. He has also failed to provide an accounting and information concerning taxes, insurance premiums, and utilities.

As a result of these failures, Morris, in June, 2005, withheld any further contributions to the 19<sup>th</sup> Street LLC, but not before they purchased a third property and again brought about the formation of a limited partnership, "City Point LLC." This time Morris paid \$993,991.82 or 100% of the cash required to make settlement. This investment involved the services of Joel Lubner, Esq., an attorney hired by Younis. According to Morris, Younis allocated to Lubner the right to 5% of any profit or "cash flow" generated by City Point LLC, arrangements to which Morris says she did not consent. Morris also avers that no work has been done on the project and that Younis has failed to provide an accounting.

In sum, plaintiff alleges that between July 2004 and June 2005, she has contributed a total of \$1,438,834.98 to the three ventures, Younis has contributed \$39,750 but has been paid management fees of \$23,258, although he has not developed the properties, and he has failed to provide management and financial information to her. Morris acknowledges that there was no formal operating agreement signed by the parties as to any of the three property ventures. She does, however, aver that as to two of the companies, draft agreements were prepared but never signed – drafts which included the parties' agreements as to cash flow and the distribution of profits and losses. However, she maintains that the parties agreed to her majority ownership. Finally, plaintiff asserts the details of her efforts to reach a settlement of her disputes with Younis and why those efforts were not successful.

## II. Discussion

The formation, management, and operations of limited liability companies are governed by a Pennsylvania statute, 15 Pa. C.S. §§ 8901 *et seq.* The requirements for registration, purposes, names, liabilities, powers, and duties are all specifically covered by various sections of the Act. A detailed certificate of organization must be provided and filed with the state. 15 Pa. C.S. §§ 8913 and 8914. On the other hand, there are almost no restrictions on how the members of a limited liability company may conduct their affairs. Instead, they do so under their own operating agreement. An operating agreement is defined as “[a]ny rules or procedures adopted for the regulation and governance of the affairs of a limited liability company and the conduct of its business.” 15 Pa. C.S. § 8903. It need not be in writing and “may contain any provision for the regulation of the internal affairs of a limited liability company adopted by the members, whether or not specifically authorized by or in contravention of this chapter [15 Pa. C.S. §§ 8901 *et seq.*]”<sup>1</sup> 15 Pa. C.S. § 8916(b).

At the heart of this matter is whether or not the parties had such an agreement as to the internal affairs, specifically as to the ownership, of their three limited liability companies. There were no executed documents labeled “Operating Agreements.” Nevertheless, the plaintiff asserts that when the parties initially agreed to enter their ventures it was also agreed that in exchange for her contributing a majority of the capital she would have a majority ownership position. In addition, she avers that at the time the limited liability companies were created, the parties understood that as she was contributing the majority of the cash, she would retain a majority interest in each of the three LLCs.

The defendant denies her assertions and contends that in the absence of written operating agreements, there were no binding agreements as to their ventures (except the things he says they

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<sup>1</sup> Except for certain statutory provisions which are not of importance in this case.

did agree upon) and that he is therefore entitled to partial judgment on the pleadings.

In support of his motion for partial judgment on the pleadings, the defendant raises three arguments. First, he maintains there are no factual disputes of a material nature. Next, he asserts that because the parties did not sign documents labeled “operating agreements,” Pennsylvania law requires the parties’ equity interests to be equally divided. Finally, he argues that he is therefore entitled to a declaration that the parties each have a 50% ownership interest in the companies. Because I find that there are material facts that are in dispute, this motion must be refused.

The amended complaint makes it very clear that it is Morris’ position that she and Younis agreed that she would advance the majority of the money for their ventures and that she would own a majority of each of those ventures. In his answer to Morris’ original complaint, his counterclaims, and his answer to her amended complaint, Younis denies this basic contention and asserts there was no such over-arching agreement. His response to her fundamental claim pretty well takes care of all of his arguments wherever and whenever presented that there are no factual disputes. But defendant has gone further. He asserted that there was an operating agreement after all.

In his original answer to Morris’ complaint, Younis states as an affirmative defense, “[t]he Plaintiff is not entitled to the relief she requests because she has breached the terms of the operating agreements for the LLCs.”<sup>2</sup> *See Ans. 8/16/06, Affirmative Defenses*, at ¶8. To emphasize his point that there were agreements for the internal affairs of the LLCs, defendant next alleged, “[t]he Plaintiff is not entitled to the relief she requests because she has breached the terms of her agreement with Younis.” *Id.* at ¶9. Then defendant filed an amended answer with

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<sup>2</sup> Note: plural agreements and plural LLCs.

counterclaims in which he alleged that he and Morris had agreed that each would own 50% of the LLCs and that “[t]he agreement between Plaintiff and Younis was a valid and enforceable contract.” *See Amend. Ans. 9/19/06, Counterclaims*, at ¶ 38.

Thus, in keeping with the shifting tides of the world’s oceans, the defendant has moved for judgment on the pleadings on the basis that there was no agreement, to a claim that Morris breached their “operating agreements,” to a claim that Morris breached “her agreement,” to the claim that Morris breached “the agreement” with Younis. No agreement, their agreements, her agreement, and the agreement seem to cover the waterfront.

To try to understand Younis’ position, I have asked myself three questions. First, do the terms “any rules” and “any procedures” as used in 15 Pa. C.S. § 8903 mean something other than “*any* rules” and “*any* procedures”? Second, does the term “any provision” as used in 15 Pa. C.S. §8916(b) mean something other than “*any* provision”? I conclude that “any” means “any” and refers to “rules,” “procedures,” and “provisions.” Third, if the agreements described by Morris in her complaint and alleged by Younis in his filings, were not operating agreements, what were they? Try as often as I may, I come to the same conclusion each time – voilà, they are operating agreements.

Having gone through this rather challenging legal analysis, I conclude that as to each LLC there was an operating agreement just as the defendant alleged in his affirmative defenses. True, the parties differ on what the terms of their operating agreements were, but it is inescapable that their dispute involves operating agreements.

Until factual findings have been made concerning the existence of and the terms of any operating agreements concerning the three LLCs, I cannot determine the ownership relationship between the parties. Thus, I cannot conclude that the parties are per capita owners and that

Younis is presently entitled to a declaration that the parties each have a 50% ownership interest in their companies. It may eventually come to that, but not on a motion for judgment on the pleadings. To repeat the obvious: for the purposes of this motion, Younis must admit the truth of all the facts well-pleaded by the plaintiff and Morris asserts that the parties' agreed to her majority ownership interest. Younis' assertions to the contrary only highlight that the facts are in dispute. The lack of a written operating agreement does not require a per capita division, and in the absence of an executed operating agreement that specifically sets forth each partners' ownership interest, the terms of any unwritten operating agreements will no doubt be for a fact-finder to determine as will be Morris' right to the dissolution of the limited liability companies and the return of her investments.

An appropriate order follows.

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WASEEM YOUNIS

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CIVIL ACTION

No. 06-CV-2576

**ORDER**

AND NOW, this third day of May, 2007, it is hereby ORDERED that the defendant's motion for partial judgment on the pleadings ( Dkt. #19) is DENIED.

BY THE COURT:

/s/ J. William Ditter, Jr.  
J. WILLIAM DITTER, JR., S.J.